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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,042	02/05/2002	Cory O. Nykoluk	10759-00159	4190

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,042

Applicant(s)

NYKOLUK, CORY

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 47-87 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two curved arms spaced apart in claim 51, the rigid bottom along with the wheel wells, the handle mounted to the distal end along an axis extending generally perpendicular to the center while being configured to pivot about the center axis with a locking mechanism must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 61-73, and 87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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It is unclear what comprises the slot in and the locking protrusion in claim 61. It seems that these are the channels 220 and portion 262. Furthermore, it seems that claim 71 recites these elements again. This is a double inclusion.

3. Claims 51, 60, 65, 73, 77, and 86-87 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the two curved arms spaced apart from one another (cl. 51, 77, 65), and the rigid base with wheel wells (cl. 60, 73). This is a new matter rejection.

4. Claim 47-48, 52-59, 61, 66-72, and 74-87 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu (6508344). Lu teaches a towing member having an arm having distal end and proximal end with an axial length, a towing handle 20, a locking mechanism located proximate the handle movable between a locked position and an unlocked position comprising a movable locking element defining a lot at 325 and a locking protrusion 50 extending through the slot, and a release mechanism as claimed.

With respect to the non-extendable portion, it is submitted that there is inherently a non-extendable portion so that the two arms in Lu can be accommodated.

Regarding claim 57, note that there is a face facing upward in Lu(adjacent the distal peripheral edge of portion 35).

Regarding claim 57 and 71, note the channels 421 between the locking protrusions.

Regarding claim 63, note that the tube is curved forward as claimed. (see notes)

Regarding claim 71, note the channels 712 in Lu.

5. Claims 47-59, 61-72, and 74-87 are under 35 U.S.C. 103(a) as being unpatentable over Lu '344 in view of Miyoshi (5908093). To the degree it is argued that Lu fails to teach a non extendable portion, It would have been obvious to one of ordinary skill in the art to provide an extendable portion as taught by Miyoshi (Fig. 5, portion 55A) to provide a connection to the luggage.

Regarding claim 49, it would have been obvious to one of ordinary skill in the art to provide curved arm portions to enable one to two the luggage easily.

6. Claims 60 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu rejections, as set forth above in paragraphs 4 and 5, and further in view of either Tsai (5524920) or Hung-Hsin (5374073). It would have been obvious to one of ordinary skill in the art to provide a rigid back with wheel wells as taught by either Tsai (portion 1), or Hung-Hsin (portion 31) to provide a desired base for the luggage.

7. Claims 47, 52, 54, 56, 57, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim (6182983). Kim teaches a baggage having a towing handle having a non-extendable portion 512, an arm 520, a pivot mechanism 540 connecting the towing handle to the distal end of the arm. It is noted that the arm 520 is retractable with respect to the non-extendable portion, i.e., pivotally retractable via the locking portion 513. Note that in the extend position the distal end at 540 would be farther away from the luggage when compared to the position when the portion 520 pivotally adjusted, via wing nut 517, to lie parallel to the body of the luggage

Regarding claim 52, note the nonextendable portion comprises portion 510, the two screws attached to a piece inside the luggage (adjacent to portion 2).

Regarding claim 53, the stem is portion 530.

8. Claims 61, 66-70, and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (6591951). Chen teaches a non-extendable portion, a towing handle and a locking mechanism as claimed. Note that the term slot is broad. The hole in 442 is the slot as claimed and portion 411 comprises the protrusion as claimed.

9. Claims 47,48, 49, 52, 54-57, 59, 61, 66-72, 86, and 87 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu (6530459) or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Miyoshi (5908093). Lu '459 teaches a towing member having non extendable portion (inherently couple to portion 11), an arm having a proximal end, a distal end movable between extended and retracted positions, a towing handle 20 pivotally connected to the distal end of the arm via portion 19 configured to pivot about the center axis at the distal end of the arm a locking mechanism located proximate the handle and the distal end of the arm the locking mechanism being selectively moveable between a locked position (shown in Fig. 4) and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis in the lock position and permits pivoting of the towing handle about the center axis when in the unlocked position.

Regarding claim 58, note the protrusions forming the channels 713.

Regarding claim 59, note the cylindrical shape of the arm. The cylindrical shape is uniformly curved along the length.

Regarding claims 57, 70, the lateral portion 322 and the stem 324 forms the T-shaped handle as claimed.

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10. Claim 47, 52, 54, 55, 56, 58, 59, 61, 66-69, 71, 72, and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Lu (6530459). Lu teaches a towing member having an arm having distal end and proximal end with an axial length, a towing handle, a locking mechanism located proximate the handle movable between a locked position and an unlocked position comprising a movable locking element defining a slot at 325 and a locking protrusion 50 extending through the slot, and a release mechanism as claimed. With respect to the limitation that the arm being curved outwardly, the arms in Lu are curved with respect to its circumference. Note that the arm is away from the baggage in the extended position as claimed.

11. Claims 47, 49-52, 54-56, 58-59, 61, 63-69, 71, and 72 are under 35 U.S.C. 103(a) as being unpatentable over Lu '344 in view of Miyoshi (5908093). Claims 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Miyoshi. To the degree it is argued that Lu fails to teach a non extendable portion, it would have been obvious to one of ordinary skill in the art to provide an extendable portion as taught by Miyoshi (Fig. 5, portion 55A) to provide a connection to the luggage.

Regarding claim 49, it would have been obvious to one of ordinary skill in the art to provide curved arm portions to enable one to two the luggage easily.

12. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lu '459 rejections, as set forth in paragraphs 10 and 11, and further in view of Scicluna (5984154). It would have been obvious to one of ordinary skill in the art to provide straps to provide an alternative means for carrying the luggage.

13. Claims 60, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Lu'459 rejections, as set forth in paragraphs 10-11 Tsai (5524920) or Hung-Hsin (5374073). It

would have been obvious to one of ordinary skill in the art to provide a rigid back with wheel wells as taught by either Tsai (portion 1), or Hung-Hsin (portion 31) to provide a desired base for the luggage.

Response to Arguments

14. Applicant's argument along with declarations regarding Lu'344 and Mao'706 have been considered but they are not persuasive.

With respect to the new matter rejection, with respect to the two curved arms spaced apart from one another. The specification on teaches the embodiment of Figs. 8-11 having the two spaced curved arms. The embodiment, which is currently claimed, having locking mechanism a towing handle pivotally connected to the distal end of the arm, the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise restrained from movement unable to move relative to the distal end; and a locking mechanism located proximate the handle and the distal end of the arm, the locking mechanism being selectively moveable between a locked position and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis when in the locked position and permits pivoting of the towing handle about the center axis when in the unlocked position. The two embodiments are clearly separate and it is impossible to provide such two spaced arms in the Figs. 8-11 on the embodiment of Figs. 12-16. Furthermore, the original does not teach the rigid base with wheel wells. Figs. 1-2 does not remotely show a base with wheel wells.

With respect to the Mao '706 reference, the rejections with respect to the Mao reference are hereby withdrawn. With respect to the Lu'377 reference, the affidavit dated 07/15/06 is ineffective. It is noted that the figures shown in the declaration fails to show the locking

structure show in Lu'459 or Lu'344. Furthermore, it is noted that none of the exhibit would disclose a similar device shown in Lu '459. The exhibit shows a T-shaped handle structure while the handle in Lu '459 disclose a different type of handle structure.

It is noted that applicant asserts that there are similarities between the evidence of the Declaration and the invention disclosed in Lu'344. The examiner submits there are no locking structures disclosed in these appendices. The examiner cannot determine similarities in absent of these locking structures.

With respect to Chen, applicant asserts that Chen does not teach the locking element and protrusions, it is noted that claim 61 only set forth a protrusion, not a plurality of protrusions as asserted. Furthermore, it is noted that the term "slot" is broad and the hole 442 would meet this limitation.

With respect to the Kim reference, applicant asserts that the arm in Kim is not closer to the luggage compared to the extend position. The examiner submit that the portion 520 is the arm pivotally retractable connected to the non-extendable portion 510. In the extend position the distal end at 540 would be farther away from the luggage when compared to the position when the portion 520 pivotally adjusted, via wing nut 517, to lie parallel to the body of the luggage.

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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